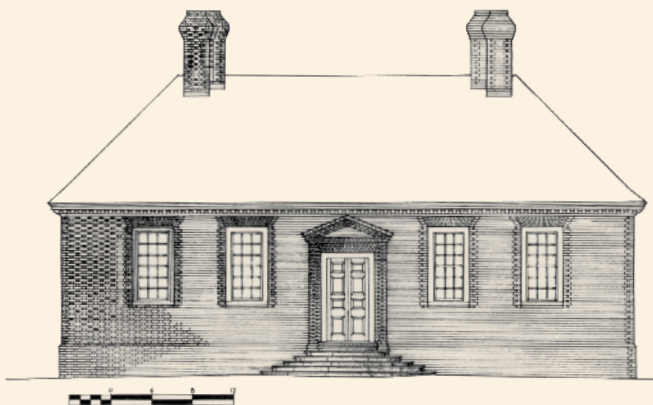


A GUIDE TO THE

*Virginia Public  
Records Act*



**LIBRARY OF VIRGINIA**

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In 2004, House Joint Resolution No. 6 authorized an eleven-member joint subcommittee to study the Virginia Public Records Act. Thirty years had passed since enactment and no major revisions had been made to the act. Over the next two years, the subcommittee solicited comments from interested parties with the objective of updating the act in order to reflect and meet the demands of rapidly changing technology. The work of the subcommittee was presented to the General Assembly and passed in 2006.

While there are a number of significant changes to the act, the intent remains to ensure that procedures used to manage and preserve public records are uniform throughout the Commonwealth. To that end, the act directs that any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to the Public Records Act be furnished a copy of the act within two weeks following election, reelection, appointment, or reappointment. Such individuals are to read and become familiar with the provisions of the act.

This pamphlet is provided for your convenient reference to the Virginia Public Records Act. The Library of Virginia administers a program for the efficient and effective management of Virginia's public records with services and resources available to both state agencies and local governments. Direct your questions about the program or requests for more VPRA booklets to the Records Analysis Section, Library of Virginia, 800 East Broad Street, Richmond, VA 23219, 804.692.3600, or visit [www.lva.virginia.gov/whatwedo/records/index.htm](http://www.lva.virginia.gov/whatwedo/records/index.htm).

Conley L. Edwards  
State Archivist and  
Director of Archival &  
Records Management  
Services Division

### YOUR RESPONSIBILITIES FOR PUBLIC RECORDS

Government executives create and maintain public records as part of their official responsibilities. These materials may be in paper, electronic, or other formats. This pamphlet will assist you from the outset of your state service in:

- Identifying public records that must be incorporated into agency files and maintained under the control of the Commonwealth
- Distinguishing public records from extra or convenience copies of records
- Identifying personal files that contain information not used to conduct agency business and that may be removed at your discretion
- Maintaining personal files separate from public records under the control of the agency

As specified in the *Code of Virginia* (§ 42.1-88), any custodian of public records shall, at the expiration of his term of office, appointment, or employment, deliver to his successor—or, if there be none, to the Library of Virginia—all books, writings, letters, documents, public records, or other information kept or received in the transaction of official business. Any person who shall refuse or neglect to deliver public records for a period of ten days after a request is made in writing by the successor or the Librarian of Virginia shall be guilty of a Class 3 misdemeanor.

### WHAT ARE PUBLIC RECORDS?

Public records are recorded information documenting a transaction or activity by or with any public officer, agency, or employee of state government or its political subdivisions. Regardless of physical form or characteristics, the recorded information is a public record if it is produced, collected, received, or retained in pursuance of law or in connection with the transaction of public business.

The medium on which such information is recorded may be, but is not limited to, paper; film; tapes; Mylar; linen; silk; vellum; or magnetic, optical, or solid state devices that can store electronic signals. The general types of records may be, but are not limited to, books, papers, letters, documents, printouts, photographs, films, tapes, microfiche, microfilm, photostats, sound recordings, maps, drawings, or any representations held in computer memory.

Each agency or locality is responsible for determining whether the materials it creates meet this definition of a public record. Agencies must create and maintain records containing a full accounting of their organization, functions, policies, and activities. Agency records must also contain the information needed to protect the rights of the government and of the citizens of Virginia directly affected by government activities.

Paper records may be originals or copies, such as file copies of outgoing correspondence or copies forwarded for action. Multiple copies of the same document may each be a record if each serves a separate administrative purpose and if they are kept in separate filing or recordkeeping systems. Extra copies, such as distribution copies, stock copies, and copies maintained for convenience or reference, are not public records. If electronically created records are maintained in paper recordkeeping systems, the information necessary for a complete record must be printed. Contact your agency's records officer for further guidance.

Many factors contribute to the determination that documentary materials are public records. If the answer to any of the following questions is "yes," the document is a public record.

- Did the agency require creation or submission and maintenance of the document?
- Was the document used to conduct or facilitate agency business?
- If the document is a draft or preliminary document created for background or a similar purpose, does it contain unique information that explains formulation of significant program policies and decisions?

## Frequently Asked Questions

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- Was the document distributed to other offices or agencies for formal approval or clearance?
- Is the document part of an electronic information system used to conduct government business?

### **WHAT DOCUMENTARY MATERIALS ARE NOT PUBLIC RECORDS?**

The Virginia Public Records Act (§ 42.1-76) definition of records *excludes* three specific types of materials: reference books and exhibition materials made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

### **ARE PRELIMINARY DRAFTS AND WORKING PAPERS PUBLIC RECORDS?**

Drafts and working papers should be filed and maintained as part of the agency's records if they explain how the agency formulated and executed significant program policies, decisions, actions, or responsibilities, or contain unique information such as annotations or comments.

### **WHAT ARE PERSONAL FILES?**

The term personal files refers to documentary materials that are either unrelated to the conduct of agency business (e.g., files relating to political activities, personal and family matters, or non-governmentally related social or civic activities) or indirectly related to agency business but outside the scope of the definition of public records (i.e., not used to conduct government business, except at the gubernatorial and secretariat level).

Personal files are those materials that belong to an individual, not the agency. Certain files are clearly personal, such as those that are not used in the transaction of agency business.

Personal files may contain references to or comments on agency business, but they are considered personal only if they are not used in the conduct of business. Traditionally, personal files have included the following categories of material:

- Business or professional files created before entering government service, files created during or relating to previously held positions, political materials, and reference files.
- Private files brought into, created, or received in the office, and family and personal correspondence and materials documenting professional activities and outside business or political pursuits.
- Manuscripts and drafts for articles and books as well as volunteer and community service records are considered personal, even if created or received while in office, because they do not relate to agency business.
- Work-related personal files including diaries, journals, notes, and personal calendars and appointment schedules (below the gubernatorial and secretariat level). Though work-related, they may be personal if they are used only as reminders and personal observations on work-related topics, not for the transaction of government business. This category is the most difficult to distinguish from records because of its work-related content.

### **WHAT DO I NEED TO DO WHEN I ENTER STATE SERVICE?**

You and your staff should follow these recommended recordkeeping practices. This practice should begin immediately upon taking the position and be faithfully followed throughout your tenure in the position.

- Contact the agency's records officer for agency records management policies and procedures.



## Frequently Asked Questions

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- Implement the records management policies and procedures issued by the agency records officer. Follow retention schedule guidelines on records creation and procedures for filing (manually or electronically) for all types of records, including paper records, electronic records (records generated with electronic mail, word processing, spreadsheet, and other desktop applications), audiovisual records, cartographic records, and architectural and engineering records.
- Establish separate files and directories for public records and personal materials to avoid the difficult task of reviewing voluminous materials when you are ready to leave the agency.
- Decide whether you want copies of records (usually those that you have originated, reviewed, signed, or otherwise acted upon) for later use, and consult with appropriate agency officials (e.g., records officer) to find out if the agency permits duplication and removal of duplicate.
- Make copies of public records for your personal use as they are being created.
- Document the substance of meetings and telephone or face-to-face conversations where decisions are made, issues are resolved, or policy is established.
- Extract government business information from documents that contain a mix of personal and business matters and include the business information in agency files.

### WHY SHOULD I CARE ABOUT RECORDS?

You and other government officials have a legal obligation to ensure that your agency establishes and follows appropriate records creation and maintenance procedures. Good recordkeeping:

- Contributes to the smooth operation of your agency's programs by making the information needed for decision making and operations readily available
- Provides information useful to successor officials and staff for back-

ground and analysis, facilitating transitions between administrations

- Creates a complete record of your official actions that will remain with the agency for future use by agency officials and may later be transferred to the Library of Virginia as a historical record
- Ensures accountability to the administration, the General Assembly, and all Virginians
- Ensures that electronic records, especially those generated by desktop applications, will be available to all authorized personnel
- Protects records from inappropriate and unauthorized access
- Facilitates authorized removal of materials by avoiding the need to separate public records from extra copies of records and personal materials when you leave office

### **WHAT HAPPENS TO PUBLIC RECORDS?**

The law provides that public records may only be destroyed with the Library of Virginia's authorization. The Library staff appraises the records to determine which are permanent or archival—that is, records that have administrative, legal, fiscal, or historical value that justifies preservation as part of the collection of the Library of Virginia. All records not designated as permanent are considered temporary, though their retention periods may vary considerably.

Records retention schedules are compiled in conjunction with the records management and archival staff at the Library of Virginia. These provide written legal guidelines to agencies for determining the retention period and disposition of their records. Temporary records should be destroyed at the end of the retention period specified in the retention schedule with the destruction process documented by appropriate forms.

### WHERE CAN I GET FURTHER INFORMATION AND ASSISTANCE?

Contact your agency's designated records officer or the records analysis section at the Library of Virginia. More information, including a glossary of terms used in this pamphlet, as well as a checklist to assist you and your staff, is available on the Library of Virginia's Web site at [www.lva.virginia.gov/whatwedo/records/index.htm](http://www.lva.virginia.gov/whatwedo/records/index.htm).

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**LIBRARY OF VIRGINIA**

**CODE OF VIRGINIA, TITLE 42.1 LIBRARIES, CHAPTER 7  
VIRGINIA PUBLIC RECORDS ACT (42.1-76 THRU 42.1-91)**

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§ 42.1-76. *Legislative intent; Title of Chapter.*

The General Assembly intends by this chapter to establish a single body of law applicable to all public officers and employees on the subject of public

## Virginia Public Records Act

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records management and preservation and to ensure that the procedures used to manage and preserve public records will be uniform throughout the Commonwealth.

This chapter may be cited as the Virginia Public Records Act.  
(1976, c. 746.)

### § 42.1-76.1. *Notice of Chapter.*

Any person elected, reelected, appointed, or reappointed to the governing body of any agency subject to this chapter shall (i) be furnished by the agency or public body's administrator or legal counsel with a copy of this chapter within two weeks following election, reelection, appointment, or reappointment and (ii) read and become familiar with the provisions of this chapter.

(2006, c. 60.)

### § 42.1-77. *Definitions.*

As used in this chapter:

**"Agency"** means all boards, commissions, departments, divisions, institutions, authorities, or parts thereof, of the Commonwealth or its political subdivisions and includes the offices of constitutional officers.

**"Archival quality"** means a quality of reproduction consistent with established standards specified by state and national agencies and organizations responsible for establishing such standards, such as the Association for Information and Image Management, the American National Standards Institute, and the National Institute of Standards and Technology.

**"Archival record"** means a public record of continuing and enduring value useful to the citizens of the Commonwealth and necessary to the administrative functions of public agencies in the conduct of services and activities mandated by law that is identified on a Library of Virginia approved records retention and disposition schedule as having sufficient informational value to be permanently maintained by the Commonwealth.

**"Archives"** means the program administered by The Library of Virginia for the preservation of archival records.

**“Board”** means the State Library Board.

**“Conversion”** means the act of moving electronic records to a different format, especially data from an obsolete format to a current format.

**“Custodian”** means the public official in charge of an office having public records.

**“Disaster plan”** means the information maintained by an agency that outlines recovery techniques and methods to be followed in case of an emergency that impacts the agency’s records.

**“Electronic record”** means a public record whose creation, storage, and access require the use of an automated system or device. Ownership of the hardware, software, or media used to create, store, or access the electronic record has no bearing on a determination of whether such record is a public record.

**“Essential public record”** means records that are required for recovery and reconstruction of any agency to enable it to resume its core operations and functions and to protect the rights and interests of persons.

**“Librarian of Virginia”** means the State Librarian of Virginia or his designated representative.

**“Lifecyle”** means the creation, use, maintenance, and disposition of a public record.

**“Metadata”** means data describing the context, content, and structure of records and their management through time.

**“Migration”** means the act of moving electronic records from one information system or medium to another to ensure continued access to the records while maintaining the records’ authenticity, integrity, reliability, and usability.

**“Original record”** means the first generation of the information and is the preferred version of a record. Archival records should to the maximum extent possible be original records.

**“Preservation”** means the processes and operations involved in ensuring the technical and intellectual survival of authentic records through time.

**“Private record”** means a record that does not relate to or affect the carrying out of the constitutional, statutory, or other official ceremonial duties

of a public official, including the correspondence, diaries, journals, or notes that are not prepared for, utilized for, circulated, or communicated in the course of transacting public business.

**“Public official”** means all persons holding any office created by the Constitution of Virginia or by any act of the General Assembly, the Governor and all other officers of the executive branch of the state government, and all other officers, heads, presidents or chairmen of boards, commissions, departments, and agencies of the state government or its political subdivisions.

**“Public record”** or **“record”** means recorded information that documents a transaction or activity by or with any public officer, agency or employee of an agency. Regardless of physical form or characteristic, the recorded information is a public record if it is produced, collected, received or retained in pursuance of law or in connection with the transaction of public business. The medium upon which such information is recorded has no bearing on the determination of whether the recording is a public record.

For purposes of this chapter, **“public record”** shall not include non-record materials, meaning materials made or acquired and preserved solely for reference use or exhibition purposes, extra copies of documents preserved only for convenience or reference, and stocks of publications.

**“Records retention and disposition schedule”** means a Library of Virginia-approved timetable stating the required retention period and disposition action of a records series. The administrative, fiscal, historical, and legal value of a public record shall be considered in appraising its appropriate retention schedule. The terms **“administrative,” “fiscal,” “historical,”** and **“legal”** value shall be defined as:

1. **“Administrative value”**: Records shall be deemed of administrative value if they have continuing utility in the operation of an agency.
2. **“Fiscal value”**: Records shall be deemed of fiscal value if they are needed to document and verify financial authorizations, obligations, and transactions.
3. **“Historical value”**: Records shall be deemed of historical value if they contain unique information, regardless of age, that provides

understanding of some aspect of the government and promotes the development of an informed and enlightened citizenry.

4. “**Legal value**”: Records shall be deemed of legal value if they document actions taken in the protection and proving of legal or civil rights and obligations of individuals and agencies.

(1976, c. 746; 1977, c. 501; 1981, c. 637; 1987, c. 217; 1990, c. 778; 1994, cc. 390, 955; 1998, cc. 427, 470; 2005, c. 787; 2006, c. 60.)

§ 42.1-78. *Confidentiality safeguarded.*

Any records made confidential by law shall be so treated. Records which by law are required to be closed to the public shall not be deemed to be made open to the public under the provisions of this chapter. Records in the custody of The Library of Virginia which are required to be closed to the public shall be open for public access 75 years after the date of creation of the record. No provision of this chapter shall be construed to authorize or require the opening of any records ordered to be sealed by a court. All records deposited in the archives that are not made confidential by law shall be open to public access.

(1976, c. 746; 1979, c. 110; 1990, c. 778; 1994, c. 64; 2006, c. 60.)

§ 42.1-79. *Records management function vested in The Library of Virginia.*

- A. The archival and records management function shall be vested in The Library of Virginia. The Library of Virginia shall be the official custodian and trustee for the Commonwealth of all public records of whatever kind, and regardless of physical form or characteristics, that are transferred to it from any agency. As the Commonwealth’s official repository of public records, The Library of Virginia shall assume ownership and administrative control of such records on behalf of the Commonwealth. The Library of Virginia shall own and operate any equipment necessary to manage and retain control of electronic archival records in its custody, but may, at its discretion, contract with third-party entities to provide any or all services related to managing archival records on equipment owned by the contractor, by other third parties, or by The Library of Virginia.



- B. The Librarian of Virginia shall name a State Archivist who shall perform such functions as the Librarian of Virginia assigns.
  - C. Whenever legislation affecting public records management and preservation is under consideration, The Library of Virginia shall review the proposal and advise the General Assembly on the effects of its proposed implementation.
- (1976, c. 746; 1986, c. 565; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2005, c. 787; 2006, c. 60.)

§ 42.1-79.1. *Repealed by Acts 2005, c. 787, cl. 2.*

§§ 42.1-80. 42.1-81. *Repealed by Acts 2003, c. 177.*

§§ 42.1-81. *Repealed by Acts 2003, c. 177.*

§ 42.1-82. *Duties and powers of Library Board.*

A. The State Library Board shall:

1. Issue regulations concerning procedures for the disposal, physical destruction or other disposition of public records containing social security numbers. The procedures shall include all reasonable steps to destroy such documents by (i) shredding, (ii) erasing, or (iii) otherwise modifying the social security numbers in those records to make them unreadable or undecipherable by any means.
2. Issue regulations and guidelines designed to facilitate the creation, preservation, storage, filing, reformatting, management, and destruction of public records by agencies. Such regulations shall mandate procedures for records management and include recommendations for the creation, retention, disposal, or other disposition of public records.

B. The State Library Board may establish advisory committees composed of persons with expertise in the matters under consideration to assist the Library Board in developing regulations and guidelines.

(1976, c. 746; 1977, c. 501; 1981, c. 637; 1990, c. 778; 1994, cc. 64, 955; 2003, cc. 914, 918; 2005, c. 787; 2006, c. 60.)

§ 42.1-83. *Repealed by Acts 2006, c. 60, cl. 2.*

§ 42.1-84. *Repealed by Acts 2005, c. 787, cl. 2.*

§ 42.1-85. *Records Management Program; agencies to cooperate; agencies to designate records officer.*

- A. The Library of Virginia shall administer a records management program for the application of efficient and economical methods for managing the lifecycle of public records consistent with regulations and guidelines promulgated by the State Library Board, including operation of a records center or centers. The Library of Virginia shall establish procedures and techniques for the effective management of public records, make continuing surveys of records and records keeping practices, and recommend improvements in current records management practices, including the use of space, equipment, software, and supplies employed in creating, maintaining, and servicing records.
- B. Any agency with public records shall cooperate with The Library of Virginia in conducting surveys. Each agency shall establish and maintain an active, continuing program for the economical and efficient management of the records of such agency. The agency shall be responsible for ensuring that its public records are preserved, maintained, and accessible throughout their lifecycle, including converting and migrating electronic records as often as necessary so that information is not lost due to hardware, software, or media obsolescence or deterioration. Any public official who converts or migrates an electronic record shall ensure that it is an accurate copy of the original record. The converted or migrated record shall have the force of the original.
- C. Each state agency and political subdivision of this Commonwealth shall designate as many as appropriate, but at least one, records officer to serve as a liaison to The Library of Virginia for the purposes of implementing and overseeing a records management program, and coordinating legal disposition, including destruction, of obsolete records. Designation of state agency records officers shall be by the respective agency head. Designation of a records officer for political

subdivisions shall be by the governing body or chief administrative official of the political subdivision. Each entity responsible for designating a records officer shall provide The Library of Virginia with the name and contact information of the designated records officer, and shall ensure that such information is updated in a timely manner in the event of any changes.

- D. The Library of Virginia shall develop and make available training and education opportunities concerning the requirements of and compliance with this chapter for records officers in the Commonwealth. (1976, c. 746; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2006, c. 60.)

§ 42.1-86. *Essential public records; security recovery copies; disaster plans.*

- A. In cooperation with the head of each agency, The Library of Virginia shall establish and maintain a program for the selection and preservation of essential public records. The program shall provide for preserving, classifying, arranging, and indexing essential public records so that such records are made available to the public. The program shall provide for making recovery copies or designate as recovery copies existing copies of such essential public records.
- B. Recovery copies shall meet quality standards established by The Library of Virginia and shall be made by a process that accurately reproduces the record and forms a durable medium. A recovery copy may also be made by creating a paper or electronic copy of an original electronic record. Recovery copies shall have the same force and effect for all purposes as the original record and shall be as admissible in evidence as the original record whether the original record is in existence or not. Recovery copies shall be preserved in the place and manner prescribed by the State Library Board and the Governor.
- C. The Library of Virginia shall develop a plan to ensure preservation of public records in the event of disaster or emergency as defined in § 44-146.16. This plan shall be coordinated with the Department of Emergency Management and copies shall be distributed to all agency heads. The plan shall be reviewed and updated at least once every five years. The personnel of the Library shall be responsible for coordinat-

ing emergency recovery operations when public records are affected. Each agency shall ensure that a plan for the protection and recovery of public records is included in its comprehensive disaster plan. (1976, c. 746; 1980, c. 365; 1990, c. 778; 1994, c. 64; 1998, c. 427; 2005, c. 787; 2006, c. 60.)

### § 42.1-86.1. *Disposition of public records.*

- A. No agency shall sell or give away public records. No agency shall destroy or discard a public record unless (i) the record appears on a records retention and disposition schedule approved pursuant to § 42.1-82 and the record's retention period has expired; (ii) a certificate of records destruction, as designated by the Librarian of Virginia, has been properly completed and approved by the agency's designated records officer; and (iii) there is no litigation, audit, investigation, request for records pursuant to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), or renegotiation of the relevant records retention and disposition schedule pending at the expiration of the retention period for the applicable records series. After a record is destroyed or discarded, the agency shall forward the original certificate of records destruction to The Library of Virginia.
- B. No agency shall destroy any public record created before 1912 without first offering it to The Library of Virginia.
- C. Each agency shall ensure that records created after July 1, 2006 and authorized to be destroyed or discarded in accordance with subsection A, are destroyed or discarded in a timely manner in accordance with the provisions of this chapter; provided, however, such records that contain identifying information as defined in clauses (iii) through (ix), or clause (xii) of subsection C of § 18.2-186.3, shall be destroyed within six months of the expiration of the records retention period. (1990, c. 778; 1998, c. 427; 2005, c. 787; 2006, cc. 60, 909.)

### § 42.1-87. *Archival public records.*

- A. Custodians of archival public records shall keep them in fire-resistant, environmentally controlled, physically secure rooms designed to

ensure proper preservation and in such arrangement as to be easily accessible. Current public records should be kept in the buildings in which they are ordinarily used. It shall be the duty of each agency to consult with The Library of Virginia to determine the best manner in which to store long-term or archival electronic records. In entering into a contract with a third-party storage provider for the storage of public records, an agency shall require the third-party to cooperate with The Library of Virginia in complying with rules and regulations promulgated by the Board.

- B. Public records deemed unnecessary for the transaction of the business of any state agency, yet deemed to be of archival value, may be transferred with the consent of the Librarian of Virginia to the custody of the Library of Virginia.
- C. Public records deemed unnecessary for the transaction of the business of any county, city, or town, yet deemed to be of archival value, shall be stored either in The Library of Virginia or in the locality, at the decision of the local officials responsible for maintaining public records. Archival public records shall be returned to the locality upon the written request of the local officials responsible for maintaining local public records. Microfilm shall be stored in The Library of Virginia but the use thereof shall be subject to the control of the local officials responsible for maintaining local public records.
- D. Record books deemed archival should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever the public records of any public official are in need of repair, restoration or rebinding, a judge of the court of record or the head of such agency or political subdivision of the Commonwealth may authorize that the records in need of repair be removed from the building or office in which such records are ordinarily kept, for the length of time necessary to repair, restore or rebind them, provided such restoration and rebinding preserves the records without loss or damage to them. Before any restoration or repair work is initiated, a treatment proposal from the contractor shall be submitted and reviewed in consultation with The Library of Virginia. Any public official who causes a record book to be

copied shall attest it and shall certify an oath that it is an accurate copy of the original book. The copy shall then have the force of the original.

- E. Nothing in this chapter shall be construed to divest agency heads of the authority to determine the nature and form of the records required in the administration of their several departments or to compel the removal of records deemed necessary by them in the performance of their statutory duty.

(1976, c. 746; 1994, cc. 64, 955; 2005, c. 787; 2006, c. 60.)

§ 42.1-88. *Custodians to deliver all records at expiration of term; penalty for noncompliance.*

Any custodian of any public records shall, at the expiration of his term of office, appointment or employment, deliver to his successor, or, if there be none, to The Library of Virginia, all books, writings, letters, documents, public records, or other information, recorded on any medium kept or received by him in the transaction of his official business; and any such person who shall refuse or neglect for a period of ten days after a request is made in writing by the successor or Librarian of Virginia to deliver the public records as herein required shall be guilty of a Class 3 misdemeanor.

(1976, c. 746; 1994, c. 64; 1998, c. 427.)

§ 42.1-89. *Petition and court order for return of public records not in authorized possession.*

The Librarian of Virginia or his designated representative such as the State Archivist or any public official who is the custodian of public records in the possession of a person or agency not authorized by the custodian or by law to possess such public records shall petition the circuit court in the city or county in which the person holding such records resides or in which the materials in issue, or any part thereof, are located for the return of such records. The court shall order such public records be delivered to the petitioner upon finding that the materials in issue are public records and that such public records are in the possession of a person not authorized by the custodian of the public records or by law to possess

such public records. If the order of delivery does not receive compliance, the plaintiff shall request that the court enforce such order through its contempt power and procedures.

(1975, c. 180; 1976, c. 746; 1998, c. 427.)

### § 42.1-90. *Seizure of public records not in authorized possession.*

- A. At any time after the filing of the petition set out in § 42.1-89 or contemporaneous with such filing, the person seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to issue an order directed at the sheriff or other proper officer, as the case may be, commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth.
- B. The judge aforesaid shall issue an order of seizure upon receipt of an affidavit from the petitioner which alleges that the material at issue may be sold, secreted, removed out of this Commonwealth or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if permitted to remain out of the petitioner's possession.
- C. The aforementioned order of seizure shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner.

(1975, c. 180; 1976, c. 746.)

### § 42.1-90.1. *Auditing.*

The Librarian may, in his discretion, conduct an audit of the records management practices of any agency. Any agency subject to the audit shall cooperate and provide the Library with any records or assistance that it requests. The Librarian shall compile a written summary of the findings of the audit and any actions necessary to bring the agency into compliance with this chapter. The summary shall be a public record, and shall be made available to the agency subject to the audit, the Governor,

and the chairmen of the House and Senate Committees on General Laws and the House Appropriations and Senate Finance Committees of the General Assembly.

(2006, c. 60.)

§ 42.1-91. *Repealed by Acts 2006, c. 60, cl. 2.*



### FOR FURTHER INFORMATION

*Code of Virginia*, Title 2.2 Administration of Government, Chapter 37 Virginia Freedom of Information Act (§§ 2.2-3700 through 2.2-3714)

*Code of Virginia*, Title 2.2 Administration of Government, Chapter 38 Government Data Collection and Dissemination Practices Act (§§ 2.2-3800 through 2.2-3809) *formerly the Virginia Privacy Protection Act of 1976* (§§ 2.1-377 through 2.1-386)

*Code of Virginia*, Title 8.01 Civil Remedies and Procedure, Chapter 14 Evidence (§§ 8.01-385 through 8.01-420.6), § 8.01-391 Copies of originals as evidence

*Code of Virginia*, Title 59.1 Trade and Commerce, Chapter 43 Uniform Computer Information Transactions Act (§§ 59.1-501 through 59.1-509.2)

### CAPTIONS/CREDITS FOR A GUIDE TO THE VIRGINIA PUBLIC RECORDS ACT

**On the cover:** South elevation drawing of the Public Records Office, Williamsburg, Va., ca. 1747–1748. Built after the 1747 fire that destroyed the Capitol, the Public Records Office was constructed of brick and stone in order to minimize fire risks. Courtesy of The Colonial Williamsburg Foundation.

**Title page:** The Public Records Office building, Williamsburg, Va., had many incarnations between its original construction and Colonial Williamsburg's preservation and reconstruction. This photograph was taken after the building was restored from a private residence to its original configuration as the Public Records Office. Courtesy of The Colonial Williamsburg Foundation.

## NOTES

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## **Contact Information**

### **Records Analysis Section**

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Web page: [www.lva.virginia.gov/whatwedo/records/index.htm](http://www.lva.virginia.gov/whatwedo/records/index.htm)

### **State Records Center (SRC)**

The SRC provides secure, efficient, and economical storage and management of inactive records for state agency and locality government offices.

Telephone: 804.236.3705

Fax: 804.236.3722



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